

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Accelerating Wireline Broadband Deployment)	WC Docket No. 17-84
by Removing Barriers to Infrastructure)	
Investment)	
)	

**REPLY COMMENTS OF
USTELECOM – THE BROADBAND ASSOCIATION**

I. INTRODUCTION

USTelecom is pleased to submit its reply comments to the important issues raised in the Further Notice of Proposed Rulemaking (Further Notice), which proposes and seeks comment on a number of actions designed to further accelerate the deployment of next-generation networks and services to our nation’s consumers by removing barriers to infrastructure investment.¹ This forward-looking proceeding recognizes that consumers have for some time been moving away from traditional services provided over copper and other legacy infrastructure toward next-generation technologies, and that the best way to ensure that all Americans have access to these technologies and the services and economic opportunities they enable is to encourage and facilitate more next-generation infrastructure deployment.

As the nation’s leading association for a large segment of the providers and innovators that continue to invest billions yearly in broadband infrastructure and technologies, USTelecom is keenly aware of the importance of a regulatory environment that encourages investment,

¹ Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, *Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking*, FCC 17-154, WC Docket No. 17-84 (rel. Nov. 29, 2017) (*Further Notice*).

rewards innovation, and facilitates robust, sustainable competition. We have seen the negative effects when regulatory barriers are imposed, such as decreased investment,² resulting in less broadband deployment and fewer consumers with access to broadband.³ We therefore commend the Federal Communications Commission (Commission or FCC) for acknowledging the need to remove unnecessary impediments to broadband deployment, and for its willingness to take additional action to further facilitate broadband deployment, consistent with many of the proposals in the Further Notice.

II. DISCUSSION

A. The Commission Should Continue to Streamline Notice Requirements for Changes to Legacy Infrastructure.

There are real and measurable costs involved with maintaining copper and other legacy infrastructure. Unfortunately, those costs are borne by one segment of broadband competitors – incumbent LECs – and they must spread those costs over fewer and fewer customers at the same time that they are investing in and building newer networks.⁴ It is clear from the record that parties advocating for the Commission to maintain burdensome (and unnecessary) notice

² USTelecom estimates that investment fell in 2016 by almost \$2 billion following imposition of Title II rules governing broadband internet service providers. See USTelecom Historical Broadband Provider Capex Data, available at <https://www.ustelecom.org/broadband-industry-stats/investment/historical-broadband-provider-capex>.

³ Compare, for example, competitive choice for broadband in the U.S. versus in Europe, where the market developed under a Title II-like regulatory regime. According to 2015 data, 84% of households have a choice of two or more wired broadband providers in the U.S. compared to 43% in Europe. See Brogan, Patrick, USTelecom Research Brief, *Utility Regulation and Broadband Network Investment: The EU and US Divide* (Apr. 25, 2017), available at <https://www.ustelecom.org/sites/default/files/documents/Utility%20Regulation%20and%20Broadband%20Investment.pdf>.

⁴ For example, the shrinking demand for voice services over legacy facilities is well documented. See USTelecom Historical Residential Voice Competition Data, available at <https://www.ustelecom.org/sites/default/files/files/documents/USTelecom%20Historical%20Residential%20Voice%20Data.pdf>.

requirements are not taking these costs into account, but the Commission should. We therefore encourage the repeal of any rules that inject unwarranted delay and force providers to expend resources on legacy infrastructure that otherwise could be invested in new infrastructure.

The Commission's notice requirements serve both to protect consumers⁵ and to enable providers to adequately plan for transitions consistent with their business needs. The Commission must balance these sometimes competing goals consistent with the paramount goal of accelerating broadband deployment.

1. Calculating Waiting Periods From the Date of Carrier Notice Will Not Impede Review or Harm Affected Parties.

The Commission seeks comment on AT&T's proposal to streamline short-term network change notification requirements by calculating the effective date of such notices from the date the incumbent LEC files a notice or certification of change, rather than from the date the Commission releases public notice of such filing.⁶ Although there is some opposition to this proposal in the record,⁷ commenters offer little evidence that the effective date of changes eligible for 10-day short-term notice should be further delayed by the time it takes the Commission to release a public notice. By establishing short-term notification requirements, the Commission has already made a determination that certain changes are appropriate with minimal notice. That is, coupled with the requirement that direct notice be given to interconnecting

⁵ See Comments of Windstream Services, LLC, WC Docket No. 17-84, at 1 (Jan. 17, 2018) (noting that the notice requirements at issue here serve to protect consumers as providers transition to next-generation networks and services).

⁶ See *Further Notice* ¶ 163.

⁷ See, e.g., Comments of INCOMPAS at 3.

carriers,⁸ there is little risk to making this minor adjustment in the rules for short-term network change notifications.

2. Notification Requirements for Network Changes Affecting Interoperability of Customer Premises Equipment Should be Eliminated.

In response to the *April 2017 Notice* in this proceeding,⁹ USTelecom explained why the Commission should no longer enforce regulations requiring providers to accommodate the interoperability of obsolete customer equipment when planning technology transitions.¹⁰ AT&T further proposes that the Commission eliminate public notice requirements for network changes affecting the interoperability of customer premises equipment under section 51.325(a)(3) of the Commission's rules, and the Commission seeks comment on that proposal.¹¹ We find persuasive the arguments of AT&T and other commenters who, for example, note that these provisions are flawed because incumbent LECs cannot reasonably be expected to predict whether a network change will affect the interoperability of customer equipment.¹² These requirements in sections 51.325(a)(3) and 68.110(b) of the Commission's rules are burdensome and unnecessary, and thus should be eliminated.

⁸ *Further Notice* ¶ 163 (citing AT&T Comments at 34).

⁹ Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, 32 FCC Rcd 3266 (2017).

¹⁰ Comments of the USTelecom Association, WC Docket No. 17-84, at 30-31 (Jun. 15, 2017) (USTelecom NPRM Comments) (referring to requirements in section 68.110(b) of the Commission's rules requiring adequate written notice of certain network changes affecting the performance of terminal equipment to give customers an opportunity to maintain uninterrupted service).

¹¹ *Further Notice* ¶ 165-66.

¹² See, e.g., Comments of Verizon on the FNPRM, WC Docket NO. 17-84, at 16 (Jan. 17, 2018) (Verizon Comments).

3. The Commission Should Streamline Notice Procedures for all Network Changes Made Necessary by Force Majeure Events.

The Commission seeks comment on whether to extend streamlined notice procedures applicable to *force majeure* and other unforeseen occurrences adopted for copper retirements to all network changes.¹³ We agree with several commenters that these streamlining provisions should be extended to all network changes made necessary by unforeseen events. The same rationale exists for streamlining or eliminating notice requirements for network changes other than copper retirements that affect service and/or require service restoration. The Commission therefore should extend the codified waiver provisions applicable to copper retirements to provide greater regulatory certainty and to enable incumbent LECs to better respond to emergencies and disasters that require immediate corrective measures.

B. The Commission's Policies Should Further Facilitate Discontinuance of Legacy Services.

1. Applications to Grandfather Additional Data Services for Existing Customers Should be Expedited.

Several commenters support further streamlining of discontinuance procedures for applicants seeking to grandfather legacy data services.¹⁴ The Commission proposes a streamlined 10-day comment period with an auto-grant period of 25 days for applications to discontinue data services with speeds of less than 25 Mbps upload and 3 Mbps download when equivalent higher speed services are available in the affected service area, stating that these lower speed services “are ripe for streamlined treatment when higher speed services are

¹³ *Further Notice* ¶ 167.

¹⁴ *See, e.g.*, Verizon Comments at 14-15; Comments of CenturyLink, WC Docket No. 17-84, at 12-14 (Jan. 17, 2018) (CenturyLink Comments).

available.”¹⁵ Several commenters support streamlining at even higher speeds.¹⁶ We encourage the Commission to adopt one of these more flexible streamlining proposals. Streamlined approval for grandfathering services will incent providers to focus on developing and deploying higher speed services, and will encourage customers to migrate to services that will better serve their present and future broadband needs. Moreover, as USTelecom noted in previous comments,¹⁷ existing customers are not harmed when discontinued services (or equivalent services) remain available to them through grandfathering, so the Commission should further streamline and simplify the grandfathering process.

It follows that services, once grandfathered, should be subject to expedited discontinuance procedures for existing customers. Customers of grandfathered services have, in effect, received actual notice that their provider intends to discontinue those services in the future. The Commission’s proposed 180-day period for grandfathering before expedited discontinuance¹⁸ strikes a reasonable balance between customer and provider needs.

2. Section 214 Discontinuance Requirements Should Not Apply to Services Without Existing Customers.

The Commission seeks comment on a proposal by CenturyLink and AT&T to forbear from applying the section 214 discontinuance requirements and part 63 implementing rules when

¹⁵ *Further Notice* ¶ 156.

¹⁶ See Comments of AT&T, WC Docket No. 17-84, at 2-3 (Jan. 17, 2018) (AT&T Comments) (streamlining should apply to any data service if certain conditions are satisfied); Verizon Comments at 14 (stating that “the Commission should further streamline the grandfathering process for *all* data services regardless of speed, as grandfathering a service does not change the experience for existing customers”); CenturyLink Comments at 12-13 (streamlining should apply to data services up to 45/45 Mbps if certain conditions are satisfied).

¹⁷ USTelecom NPRM Comments at 31-32.

¹⁸ *Further Notice* ¶ 159.

carriers seek to discontinue, reduce, or impair services with no existing customers.¹⁹ This proposal represents a common sense approach since, as explained by AT&T, “no community or part of a community would be cut off from the public communications infrastructure when a service with no existing customer is eliminated.”²⁰ Thus, no notice, or at most a streamlined notice period with an auto-grant, would be appropriate.

3. Legacy Voice Services Should be Subject to Expedited Discontinuance Procedures.

The Commission seeks comment on further streamlining of the Section 214(a) discontinuance process for legacy voice services.²¹ AT&T, CenturyLink, and Verizon have proposed that legacy voice services be subject to streamlined discontinuance where a carrier certifies that it provides interconnected VoIP throughout the affected area, or there is at least one alternative voice service available.²² We support this proposal because if one of these conditions is met, then no community or part of a community will be cut off from the telephone network. According to an analysis of FCC data,²³ a mere 16.3 percent of households subscribed to legacy voice services as of year-end 2016. Moreover, the near-ubiquitous availability of mobile voice services supports freeing providers from the burdens of compliance with section 214 discontinuance requirements for legacy voice services. The Commissions therefore should adopt this reasonable streamlining proposal.

¹⁹ *Further Notice* ¶ 168.

²⁰ AT&T Comments at 5.

²¹ *Further Notice* ¶ 171.

²² AT&T Comments at 6-7; CenturyLink Comments at 17-18; Verizon Comments at 10.

²³ See USTelecom Industry Statistics, available at <https://www.ustelecom.org/broadband-industry/broadband-industry-stats/residential-competition>.

4. The Outreach Requirements Adopted in 2016 are Unnecessary and Overly Burdensome.

Increasing outreach requirements for carriers seeking to discontinue legacy, TDM-based voice services and transition to voice services using a different technology makes little sense. First, consumers have largely chosen to migrate to IP-based and wireless voice services on their own, so there is little evidence that any specialized outreach is necessary. Second, robust competition ensures that providers will keep their customers well-informed about plans to discontinue or transition their services. Third, there is no evidence in the record that existing applicable notice requirements are inadequate to notify consumers of service changes. We therefore support ITTA's proposal to eliminate the outreach requirements adopted in 2016.²⁴

C. Codifying the Commission's Existing Overlapping Policies Would Bring Regulatory Certainty.

The Commission's long-standing policy of encouraging the use of overlapping to maximize usable space on utility poles has helped to facilitate and expedite installation of infrastructure, which has enabled competition and brought a greater diversity of services to communities. The Commission seeks comment on whether to codify its longstanding precedent, in part to address claims by some parties that some utilities are requiring prior approval for overlapping, contrary to Commission holdings.²⁵ We agree with several commenters²⁶ that the Commission should continue to support its existing overlapping policy, and should go further and codify that policy to clarify the rights of attachers and pole owners, and to ensure that pole owners do not take measures that will hinder broadband deployment. More than ever, it is

²⁴ See *Further Notice* ¶ 176.

²⁵ *Further Notice* ¶¶ 161-62.

²⁶ See, e.g., AT&T Comments at 15; CenturyLink Comments at 3; Verizon Comments at 18.

important to maintain and solidify the Commission's commitment to promoting competition through its overhauled policies as existing and new providers seek to deploy more broadband.

III. CONCLUSION

Accelerating the deployment of broadband facilities and services will require a true commitment to creating the right environment that encourages providers to move resources away from outdated, obsolete services and invest in modern services that will meet the nation's broadband deployment needs. We encourage the Commission to stay on its current path of embracing the transition that is well underway by continuing to adopt important reforms that will remove unnecessary regulatory barriers to the deployment of world leading, high-speed broadband networks to our nation's business, communities, and families.

Respectfully submitted,

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